128.

SUPREME COURT OF THE UNITED STATES.

No. 48.

LESSEE OF AMBROSE WALDEN, PLFF. IN ER.

VERSUS

JOHN CRAIG'S HEIRS, ABRAHAM SHOCKEY, & AL.

ERROR TO THE CIRCUIT COURT U. S. FOR KENTUCKY.

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Langtree & O'Sullivan, Print.

Pleas before the Honorable John Catron and Thomas B. Monroe, Judges of the eighth Circuit Court of the United States of America, in and for the Kentucky district, held at the capitol, in the town of Frankfort, at the November term of said court, in the year 1837.

Caption.

Be it remembered, that heretofore, to wit, on the 27th day of March, 1837, came John Den, on the demise of Ambrose Walden, by his attorney, into the clerk's office of the court aforesaid, and sued out the following scire facias, to wit:

[SEAL.] The United States of America, to the Marshal of the Kentucky district, greeting:

Scire Facias.

Whereas, John Den, on the demise of Ambrose Walden, at a district court of the United States of America, in and for the Kentucky district, on the 19th day of June, 1800, before the judge of the said court, by the judgment of that court, had recovered of Lewis Craig and Abraham Shockey, his term of, and in the premises (marked in the plat E. F. G. C.) with the appurtenances yet to come, and unexpired, being four dwelling-houses, twenty out-houses, fifteen acres of meadow, one hundred acres of arable land, and three hundred acres of wood-land, situate on the waters of Johnson's fork of Licking, in Mason county, whereof the said Lewis Craig and Abraham Shockey, are convict as appears to us of record, which said term is yet unexpired.

And whereas, since the rendering of the said judgment, the said Lewis Craig has departed this life, leaving the following persons as heirs, to wit: John Bing, and Catharine Bing, his wife, John Craig, William Craig, Francis Barker, Thomas Tureman, and Sarah Tureman, his wife, David Childs, John Chiles, Ann Soward, Elizabeth Soward, Lewis Craig, Elizabeth Kempt, Oliver Craig, Francis Craig, McCoy Craig, Jane Craig, Melvina Craig, John H. Craig, Polly Craig, Francis Thomas, and Elizabeth Thomas.

And now, on behalf of the said John Den, on demise of Ambrose Walden, we are informed, that altho' judgment in form aforesaid be given, yet execution thereof still remains to be made.

Therefore, we command you, that you make known to the said John Bing, and Catharine Bing, his wife, John Craig, William Craig, Francis Barker, Thomas Tureman, and Mary Tureman, and Sarah Tureman his wife, David Childs, John Chiles, Ann Soward, Maria Soward, Elizabeth Soward, Lewis Craig, Elizabeth Kempt, Oliver Craig, Francis Craig, Maccoy Craig, Jane Craig, Melvina

Craig, John H. Craig, Polly Craig, Francis Thomas, and Elizabeth Thomas, heirs of said Lewis Craig, dec'd., Abraham Shockey, and Thomas Blair, the tenant in possession of the premises aforesaid, to appear before the judges of the 8th circuit court of the United States of America, in and for the Kentucky district, on the first Monday in May next, to shew cause, if any thing they can, why the said John Den, on the demise of Ambrose Walden, execution of the judgment aforesaid, ought not to have, according to the form and effect of the recovery aforesaid if to him it seems expedient, and further to do and receive what our said court shall in this part consider, and have then there this writ:

In witness whereof, Roger B. Taney, Esq., Chief Justice of the Supreme Court of the United States, hath caused the seal of our said court to be hereunto affixed, this 27th day of March, A. D. 1837, and in the 62d year of our independence.

Attest: JNO. H. HANNA,
C. C. C. K. D.

Marshal's Return.

Marshal's return, to wit: "Executed on 20 April, 1837, on John Craig, John H. Craig, Oliver, Francis, Jane, and Malvina Craig, Polly McCoy, late Polly Craig, Francis Barker, David and John Childs, Elizabeth Soward. On the 21st April, on Catharine King. On the 22d April, on Lewis Craig. On 24 April, on Thomas Blair. The following defendants are not found: Elizabeth Kempt and Ann and Maria Soward. And the following who are no inhabitants, Thomas Tureman, and Sarah, his wife, (Mo.) Francis and Elizabeth Thomas, (Baton Rouge,) Abraham Shockey and John King is dead. McCoy Craig, not found, there being no such person known to me.

ANDREW J. McCALLA,
D. M. K. D.

Do.

Executed on William Craig, in Woodford county, on 27 April 1837.

JNO. M. McCALLA,
M. K. D.

And afterwards, to wit: on the 24th day of May, 1837, the following alias scire facis was issued, to wit:

[SEAL.] The United States of America, to the Marshal of the Kentucky district, greeting:

Alias Scire Facias.

Whereas, John Den, on the demise of Ambrose Walden, at a dis-

trict court of the United States of America, in and for the Kentucky district, on the 19th day of June, 1800, before the judge of the said court, by the judgment of that court, had recovered of Lewis Craig and Abraham Shockey, his term of, and in the premises, (marked on the plat E. F. G. C.) with the appurtenances, yet to come and unexpired, being four dwelling-houses, twenty out-houses, *fifteen* acres of meadow, one hundred acres of arable land, and three hundred acres of wood-land; situate on the waters of Johnson's fork of Licking, in Mason county, whereof the said Lewis Craig, &c., are convict as appears to us of record, which said term is yet unexpired. And whereas, since the rendering of the said judgment, the said Lewis Craig has departed this life, leaving the following persons as heirs, to wit: John Bing, and Catharine Bing, his wife, John Craig, William Craig, Francis Barker, Thomas Tureman, and Sarah Tureman, his wife, David Childs, John Chiles, Ann Soward, Elizabeth Soward, Lewis Craig, Elizabeth Kempt, Oliver Craig, Francis Craig, John Maccoy, Jane Craig, Melvina Craig, John H. Craig, Polly Craig, Francis Thomas, and Elizabeth Thomas.

And now, on behalf of the said John Den, on demise of Ambrose Walden, we are informed that altho' judgment in form aforesaid be given, yet execution thereof still remains to be made.

Therefore, we again command you that you make known to the said John Bing, and Catharine Bing, his wife, John Craig, William Craig, Francis Barker, Thomas Tureman, and Sarah Tureman, his wife, David Childs, John Chiles, Ann Soward, Maria Soward, Elizabeth Soward, Lewis Craig, Elizabeth Kempt, Oliver Craig, John Maccoy, Jane Craig, Melvina Craig, John H. Craig, Polly Craig, Francis Thomas, and Elizabeth Thomas, heirs of said Lewis Craig, dec'd. Abraham Shokey, and Thomas Blair, the tenant in possession of the premises aforesaid, to appear before the judges of the eighth circuit court of the United States of America, in and for the Kentucky district, on the first Monday in November next, to shew cause, if any thing they can, why the said John Den, on the demise of Ambrose Walden, execution of the judgment aforesaid ought not to have, according to the form and effect of the recovery aforesaid if to him it seems expedient; and further, to do and receive what our said court shall in this part consider, and have then there this writ.

In witness whereof, Roger B. Taney, Esq., Chief Justice of the Supreme Court of the United States, hath caused the seal of our said court to be hereunto affixed, this 24th day of May, A. D. 1837, and in the 62d year of our Independence.

Attest: JNO. H. HANNA, *C. C. C. K. D.*

This alias scire facias is to be executed on Elizabeth Kempt, Ann and Maria Soward, and McCoy Craig, only.

Att.: JNO. H. HANNA, *C. C. C. K. D.*

Marshal's Return.

Marshal's Return to wit: "Executed on Ann and Maria Soward, at Shelbyville, 7th July, 1837. Also on Elizabeth Kempt and John McCoy, erroneously called McCoy Craig, Sept. 13th, 1837.

JOHN M. McCALLA, *M. K. D.*"

Plea, &c.

And afterwards, to wit, at the November term of the court aforesaid in the year 1837.

"And the defendants come and defend the wrong and injury when, &c., for plea and say the plaintiff, his action aforesaid, to have and maintain, ought not, because they say that the matters and things in said scire facias contained in manner and form as therein set forth, are not good and sufficient for the plaintiff to have and maintain his action aforesaid, and this he is ready to verify, wherefore, &c.

Replication.

And the defendants come and defend, &c. and say that the plaintiff, his action aforesaid ought not to have and maintain because they say that there is no such record as in the scire facias alleged—and this he prays may be enquired of by the court, wherefore he pray judgment, &c.

The plaintiffs says that the matters and things in said scire facias contained in manner and form as set forth are sufficient to maintain his action, and this he is ready to verify, &c.

And the plaintiffs comes and says, that there is such record, as in the scire facias alledged, and this they are ready to verify by the record.

And thereupon the evidence upon the issue of *nul tiel record*, and the arguments thereon, and upon the demurrer to the scire facias being heard, but the court not being advised, took time, &c.

And afterwards, to wit, on a subsequent day of the term and year last aforesaid, and "the court being now sufficiently advised of and concerning the premises it seems to the court that the law, upon the demurrer is for the defendants, and it is the opinion of the court that there is no such record as the plaintiff hath in his scire facias alledged.

Judgment.

It is therefore considered by the court, that the plaintiff take nothing by his said scire facias and that the defendants go hence and recover of the lessors of the plaintiff their costs herein expended. Previous to the pleadings in this scire facias being entered, the following agreement was filed to wit: It is agreed by the parties in the foregoing case, that in case the law on the pleadings be adjudged against the defendants either by this court or the Supreme Court, that they, or either of them, be at liberty to plead any other matters that might have been pleaded on the calling of the cases at this term.

Bill of Exceptions.

On the trial of this cause the following bill of exceptions was tendered to the court signed, sealed, and ordered to be recorded.

"Be it remembered, that on the trial of this cause the plaintiff in support of his scire facias and replication to the plea of *nul tiel record*, in this case the plaintiff produced and read in evidence the record of the judgment and proceedings in the District court of Den, on demise of Walden vs. Craig and Shockey, and the order of the circuit court extending the demise, (here copy them,) but the court found that the aforesaid records did not sustain the scire facias and replication, and gave judgment for defendants. To which decision of the court the plaintiff excepts and prays that these his exceptions be signed, sealed, and enrolled; which is accordingly done.

J. CATRON. [L. S.]
THOS. B. MONROE. [L. S.]

Order of Circuit Court.

The following is the record referred to in the foregoing bill of exceptions, to wit:

May Term, May 8th, 1824.

JOHN DEN, on demise,
AMBROSE WALDEN, Plaintiff.
Against
LEWIS CRAIG and
ABRAM SHOCKEY, Defendants.

In Ejectment.

On motion of the plaintiff in the above cause by his attorney, leave is given to amend the declaration by extending the demise to fifty years which is done accordingly. But executions not to go out before the first day of March next.

The following is the record referred to in the foregoing bill of exceptions to wit:

Record from the District Court.

"Be it remembered, that heretofore, to wit, at a court of the United States of America, held in and for the Kentucky district at the Capitol in the town of Frankfort, in the month of March, in the year of our Lord one thousand seven hundred and ninety-eight, came John Denn, lessee of Ambrose Walden, and exhibited a certain bill (in an action of trespass and ejectment) against Richard Fen, the casual ejector, which follows in these words, viz.

"Kentucky District, to wit: John Den complains of Richard Fen in custody, &c. For that, to wit, that whereas, Ambrose Walden, on the fifteenth day of August, in the year of our Lord one thousand seven hundred and ninety-nine, in Mason county, in Kentucky Dis-

trict aforesaid, had demised and granted, and to farm, let to the said John Den, four dwelling-houses, twenty out-houses, fifteen acres of meadow, one hundred acres of arable land, and three hundred acres of wood-land, with the appurtenances, situate, lying, and being on the waters of Johnson's fork, of Licking, in Mason county aforesaid, to have and to hold, the said premises with the appurtenances, to the said John Den and his assigns, from the date of the said lease until the full end and term of ten years from thence next ensuing, and fully to be complete and ended. By virtue of which said demise the said John Den entered into the said tenements with the appurtenances, and was thereof possessed until the said Richard Fen, afterwards, to wit, on the day and year aforesaid, in the county and District aforesaid, with force and arms, &c. entered on the tenements aforesaid, with the appurtenances, in and upon the possession of the said John Den, and ejected, drove out, and amoved the said John Den from his said farm, his said term not being yet ended, and kept out and still keeps out the said John Den so ejected, drove out and amoved from his said possession, and then and there did other injuries to him against the peace and to the damage of the said John Den, sixty dollars, and therefore he brings suit, &c.

Pledges to Prosecute.

JOHN DOE & RICHARD ROE.

WILLIAM CLARK,
Atty. for Plaintiff.

I am informed that you are in possession of, or claim to the premises in this declaration of ejectment, or to some part thereof, and I being sued as casual ejector in this action, and having no claim or title to the said premises, do advise you to appear on the first day of next March term, in the court of the United States for the District aforesaid, by some attorney of that court, and then and there by rule of that court, cause yourself to be made defendant in my stead, otherwise, I shall suffer judgment to be entered against me, and you will be turned out of possession.

Your loving friend,
RICHARD FEN.

28th January, 1797.

BOURBON COUNTY, *sct.*

On the twenty-second day of February, one thousand seven hundred and ninety-seven, Thomas McGlanton came before the subscriber, one of the justices of the peace for said county, and made oath, that he did, on the seventeenth day of this present month, February, deliver a copy of the foregoing declaration and notice, on the premises, in the foregoing declaration mentioned, unto Abraham Shockey, he being tenant in possession of part of the premises in said declaration mentioned; and that he also, on said day, did deliver another copy of the said declaration and notice, to the wife of Charles Rutter,

one other tenant in possession of another part of the premises in the said declaration mentioned. And also, on the same day, did deliver another copy of the said declaration and notice to the wife of William Allen, one other tenant in possession of other part of the premises in the said declaration of ejectment mentioned; and the deponent further saith, that he told them all, severally, that it was a declaration in ejectment; and unless they did appear, by some attorney of the court of the United States for said district, the next ensuing term, there would be judgment thereupon against the defendants, by default, and they would be turned out of possession, or words to that effect.

WM. NEALL.

And afterwards, to wit, at the term aforesaid, the following order was made herein, viz: It appearing to the court, by satisfactory proof, that the defendants herein have been regularly served with the plaintiff's declaration, and having failed to appear and plead to the plaintiff's said action; it is therefore ordered, by the court, that the said defendants appear on the first day of the next term and cause themselves to be made defendants herein, receive a declaration in a plea of trespass and ejectment, confess the lease, entry, and ouster therein, and plead thereto; or on failure thereof, (they, having notice of this order,) judgment shall be entered against the casual ejector, and the writ of Habere facias possessionem, awarded the plaintiff.

And afterwards, to wit, at the March term, in the year one thousand seven hundred and ninety-eight, the following order was made herein, viz:

"On motion, it is ordered by the court, and by the assent of partries, that Lewis Craig, together with the deft., Abraham Shockey, be made defendants to this suit, instead of the casual ejector, Richard Fenn, and that they will immediately appear to the plaintiff's action, and receive a declaration in ejectment, confess the lease, entry, and ouster therein mentioned, and plead thereto not guilty, and agree to insist upon the title only at the trial. And it is further ordered, that if, upon the trial of the issue, a verdict should be given for the defendant, or the plaintiff should not further prosecute for any other cause than the not confessing the lease, entry, and ouster, that the lessors of the plaintiff shall pay the costs of this prosecution, if the plaintiff himself does not pay them. Whereupon, the said defendants, by their attorney, confess the lease, entry, and ouster in the declaration supposed, and agree to insist upon the title only at the trial; and the said defendants come and defend the force and injury, when and where, &c., and say they are in no wise guilty of the trespass in ejectment, in manner and form as the plaintiff against him hath complained, and of this they put themselves upon the country, and the plaintiff doth so likewise.

And it is further ordered, that Milus W. Conway do go on the land in controversy between the parties, on the day of next, if fair; if not, then on the next fair day, and then and there

lay off the same, as either party shall direct, having regard to all deeds and other evidence, that may be produced, report all matters of fact specially, and return four fair plats and certificates into the clerk's office of this court, before the day of hearing; and the sheriff of Mason county is directed to attend the said surveyor, to remove force, should any be offered. And further proceedings are continued until the next court.

And afterwards, to wit, on the day of one thousand seven hundred and , the following special case was submitted to the court, by the consent of the parties, by their attornies, viz:

"The tract of land, marked on the plat by the letters A. B. C. D., was duly granted to the said Walden, lessor of the plaintiff, by patent, from the Commonwealth of Virginia, bearing date the 21st day of November, one thousand seven hundred and eighty-six.

The said Walden and Simon Kenton, executed the agreement marked A., respecting the locating of said lands; the said agreement is made a part of this case.

The defendants are in possession of that part of the tract marked on the plat by the letters E. F. G. C., and claim the said part of the said tract of land under the said agreement A., and the endorsement thereon, and a division thereof made, as certified by the report B., which report and endorsement on said agreement is also made a part of this case.

If, upon the whole, the court shall be of opinion that the legal title to the said part of the said tract of land marked on the plat, as aforesaid, by the letters E. F. G. C., is in the plaintiff, then judgment to be entered for him; if not, judgment to be entered for the defendants.

WM. CLARK,
Att'y for the Pl'ff.
THOMAS TODD,
Att'y for the Def'ts.

And now, at this day, to wit, at the June term, 1800, (until which time this cause was continued,) the following judgment was pronounced, herein, viz:

The court, having fully considered and understood the said case, is of opinion, that the legal title to the said part of the said tract of land, marked on the plat E. F. G. C., is in the plaintiff, and was on the day of filing the declaration in this suit. It is therefore considered by the court, that the plaintiff recover against the said defendants, Lewis Craig and Abraham Shockey his term of and in the premises aforesaid, with the appurtenances yet to come and unexpired, together with his costs by him in this behalf expended; and the said defendants in mercy, &c.

And on motion of the plaintiff, by his attorney, the United States writ of Habere facias possessionem is awarded him in this suit, to cause him to have possession of the terms aforesaid, returnable to the next court.

The following exhibits appear filed in this cause, viz:

MASON COUNTY, *sct.:*

We, the commissioners, appointed by the worshipful, the court of Mason, aforesaid, for the purpose of dividing lands held in partnership between citizens of this Commonwealth and non-residents, and being called on to divide a tract of land containing one thousand three hundred and thirty-three acres, patented in the name of Ambrose Walden, between him, the said Ambrose, and Lewis Craig, ass'ee of Craig and Johnson, ass'ee of Simon Kenton, the locator of the said tract, two-thirds of which said tract is the property of the said Walden, and the other third the property of the said Lewis Craig, as aforesaid, proceeded on this day to divide the same, in the said proportions—that is to say, one-third to the said Craig, and the remaining two-thirds to the said Ambrose Walden, as follows, to wit: Beginning at Walden's southeast corner, a mulberry, buckeye, Spanish oak, and ash, called for in the original patent; thence north, twenty-two east, with the old line one hundred and fifty-five poles, to two white ashes and sugar tree; thence north, sixty-one degrees west, three hundred and twenty-nine poles, to a walnut and two red oaks, in Johnson's line; thence south, 51° west, with Johnson's line, one hundred and sixty-eight poles, to three white oaks in John Walden's line; thence to the beginning: containing three hundred and twenty acres. To have and to hold the said quantity of three hundred and twenty acres, to him, the said Lewis Craig, his heirs and assigns, forever, free and clear from the let, molestation, and hindrance of him, the said Ambrose Walden, his heirs, &c. forever; and to hold to him, the said Lewis Craig, his heirs, &c. in severalty, and no longer subject to the claim of him, the said Walden. Also divided the said tract of land, as follows, to wit: Beginning at two white oaks and sugar tree, in John Walden's line and corner, to Lewis Craig; thence north, twenty-two east, three hundred and seventy-five poles, to a red oak and honey-locust; thence north, sixty-eight west, two hundred and sixty poles, to a white oak and box elder, in Jacob Johnson's line; thence with said line, south, thirty-nine east, one hundred and twelve poles, to two buckeyes and white oak, east corner, to said Johnson; thence south, fifty-one west, three hundred and forty poles, to a walnut and two red oaks, corner, to Lewis Craig; thence south, sixty-one east, three hundred and twenty-nine poles, to the beginning; to have and to hold the said tract of land, containing six hundred and forty acres, to him, the said Ambrose Walden, and his heirs, &c. forever, in severalty, and free and clear from the claim of him, the said Lewis Craig, as assignee, as aforesaid, and his heirs and assigns, forever.

And we, the said commissioners, do certify and declare, that the residue of the said survey, in the name of the said Ambrose Walden, is interfered with by a certain claim in the name of Jacob Johnson, and therefore not divided, but is on that account left on tenancy in

common, between the said Ambrose Walden and the said Lewis Craig, and subject to a future division, as the event of the said interference may justify.

In witness whereof, we, the said commissioners, have hereunto set our hands, and affixed our seals, this tenth day of February, one thousand seven hundred and ninety-four.

DAVID MORRIS, [SEAL.]
D. V. PAYNE. [SEAL.]

Signed, sealed, and delivered before.

MASON COUNTY, *Sct.*
April Court, one thousand seven hundred and ninety-seven:

This division of lands between Walden and Craig, was returned by the commissioners and ordered to be recorded.
Teste: THOMAS MARSHALL, Jr. M. C.

B.

Articles of agreement made and done this first day of May, one thousand seven hundred and eighty, between Simon Kenton, of Kentucky, of the one part, and Ambrose Walden, of Caroline county, Virginia, witnesseth: That the said Simon Kenton doth bind himself to locate ten thousand acres for the said Ambrose Walden, in the district of Kentucky, in consideration of which, the said Ambrose Walden doth bind himself, his heirs and assigns, to convey a proper deed of one-third of the said ten thousand acres, so located, unto the aforesaid Simon Kenton, respect being held to quality and other local advantages; and lastly, both parties bind themselves to the performance of the premises, under the penalty of fifty thousand pounds.

his
SIMON ⋈ KENTON, [SEAL.]
mark.
AMBROSE WALDEN. [SEAL.]

Signed, sealed, and delivered, in presence of
ANGUS CAMERON,
JOSEPH CAKITE,
STEPHEN HUSTON.

I do assign over all my right, title, and interest, of the within article, to John Craig and Robert Johnson, this twenty-fourth day of April, one thousand seven hundred and eighty-seven.

SIMON KENTON.

JOHN WILSON,
JAMES TURNER.

I do assign the within to Robert Johnson and Elijah Craig, trustees for John Craig.

Witness my hand, May, the eighteenth, one thousand seven hundred and ninety-one.

ROBERT JOHNSON.

TOLIVER CRAIG.

We assign to Lewis Craig, the third part of the three-thousand-acre entry, in the name of Walden, and one-third of three-thousand-acre entry, in the name of John Taylor, and one-third of one thousand five hundred acres in the name of William Nelson. John Craig's interest is only given up. December the 28th, one thousand seven hundred and ninety-three.

ROBERT JOHNSON,
Trustee to John Craig.
ELIJAH CRAIG,
Trustee to John Craig.

[For plat, see original.]

The whole of this land is now claimed and contended for by Thomas Bodley and James Hughes.
February 10th, 1794.

Surveyed, for Ambrose Walden, one thousand five hundred and fifty-five acres of land, in Mason county, and on the waters of Johnson's fork, of Licking, and bounded as follows, to wit: Beginning at A, a buckeye and hoop-ash stump, shewn for said Walden's most northwestwardly corner, thence S. 68°, E. 520 poles to B, two red oaks and honey-locust, thence S. 22° W. 530 poles to C., an ash, Spanish oak, mulberry, and buckeye corner, to John Walden's survey, thence with his line N. 61°, W. 524 poles to D, a hickory, red oak, and white oak, thence N. 22° E. 424 poles to the beginning. Also divided the above land as follows, to wit: Beginning at C, an ash, Spanish oak, mulberry, and buckeye, thence N. 22° east with John Walden's line, 155 poles to E., two white ashes and sugar-tree corner to Ambrose Walden's land, thence N. 61° W. 329 poles to F., a walnut and two red oaks in Jacob Johnson's line, thence with the same S. 61° east, to the beginning at C., including 400 acres for Lewis Craig, as his equal third part in quality of that part of Ambrose Walden's survey 1,333 acres by patent, that is not included by Jacob Johnson's survey, surveyed as the commissioners of Mason county, allotted and directed. Also divided the above land as follows, to wit: Beginning at E, two white ashes and sugar-tree, corner to Lewis Craig's 400 acres, thence

N. 22° E. 375 poles to B., a red oak and honey-locust, thence N. 68° W. 260 *poles* poles to I., a white oak and boxelder in said Johnson's line, thence with the same S. 90° E. 112 poles to H. two buckeyes and white oak corner to said Johnson; thence with his line S. 51° W. 340 poles to F., a walnut and two red oaks, corner to said Craig, thence S. 61° east with his line to the beginning at E, including 535 acres for said Ambrose Walden, as his equal two-thirds in quality, all that part of said Ambrose Walden's survey of 1,333 acres by patent, that is not included in Jacob Johnson's survey. Surveyed as the commissioners of Mason allotted and directed, and the remaining six hundred and twenty acres, known in the plat by the letters A. I. H. G. D., is that part of said Walden's survey of 1,333 acres, that is claimed by a survey of Jacob Johnson, and left undivided by the said Commissioners.

WHITF'D CRAIG, *D. S. M. C.*

N. B. The within Lewis Craig's 400 acres of land was sold by said Craig to Jonathan Rose, and marked in the plat thus, J; also, sold to William Allen, and marked in the plat thus, K; also sold to Mr. Rector, and marked in the plat thus, L. The said Rose, Allen, and Rector are living on the 400 acres in plat marked Lewis Craig, and nearly as the letters point.

Surveyed by me.

WHITF'D. CRAIG.

[For plat see original, p. 18.]

In obedience of an order of the United States court for the district of Kentucky. I proceeded on the 3d day of September, 1798, to resurvey the lands in controversy, wherein Ambrose Walden is plaintiff, and Jonathan Rose, William Allen, Charles Rector, Amzel Chapin, and Abraham Shockey are defendants in ejectment, agreeable to the plat hereunto annexed, beginning (by direction of Elezeman Basea, who attended as agent for said plaintiff) at a buckeye and ash stumps, in a field, said by Nathaniel Stickson and William Allen, that the trees which were cut from said stumps were marked as a corner; thence running agreeably to the patent, S. 68° E. 524 poles to two red oaks and honey-locust, shewn by Abraham Shockey, variation 51' to the east of said corner; thence S. 22° W. 520 poles to an ash, Spanish oak, mulberry, and buckeye, on the bank of a small branch, shewn by said Shockey and Jonathcn Rose, variation 26' west; thence, N. 68 W. 514 poles to a hickory, red oak, and white oak, shewn by said

Shockey, variation 6° 45' to the west; thence, N. 22° E. 460 poles to the beginning, variation 1° 30' north, including the farms occupied by the aforesaid defendants, except Amzel Chapin, no person of that name being known.

PIERCE LAMB, *D. S.*
E. H. LEE, *S. M. C.*

And on the 2d day of June, 1812, the following habere facias was issued, to wit:

Habere Facias.

[SEAL.] The United States of America, to the Marshal of the Kentucky district, greeting:

Whereas, John Den, lessee of Ambrose Walden, lately in our district court of the United States, for the Kentucky district, by judgment of the said court, hath recovered against Lewis Craig, and Abraham Shockey his term, yet to come of, and in four dwelling-houses, twenty out-houses, 15 acres of meadow, one hundred acres of arable, land, and 300 acres of woodland, with the appurtenances, situate, lying, and being on the waters of Johnson's fork, of Licking, in the county of Mason and district aforesaid, to have and to hold the said premises, with the appurtenances, to the said John Den and his assigns, from the 15th day of August, A. D. 1789, unto the full end and term of ten years from thence next ensuing, and fully to be complete and ended, by virtue of which said demise, the said John Den entered into the said tenements, with the appurtenances, and was thereof possessed, until the said Craig and Shockey afterwards, to wit, on the same day and year aforesaid, at the county and district afs'd, with force and arms, &c. entered on the tenements aforesaid, with the appurtenances, in and upon the possession of the said John Denn, ejected, drove out, and amoved the said John Denn, from his farm, afs'd his said term being not yet ended, and kept out, and still doth keep out, the said John so ejected, drove out and amoved from his said possession; whereof, the said Craig and Shockey are convict, as appears to us of record; therefore, we command you without delay, you cause the said John Denn to have his possession of his farm afs'd; his term yet to come of, and in the lands and tenements aforesaid, with the appurtenances, and how you shall have executed this writ, make appear to the judge of our district court, at the capitol, in the town of Frankfort, on the first Monday in August next, and have then there this writ.

Witness, Henry Innis, Esq., judge of our said district court, hath caused the seal thereof to be hereunto affixed, this 2d day of June, A. D. 1812, and of our Independence the 36th.

Attest: JNO. H. HANNA, *C. K. D. C.*

Marshal's return, to wit: "stayed by supercederes; 62 miles travelling.

JOHN A. MITCHELL, *D. for*
ROBT. CROCKETT, *M. K. D.*"

And afterwards, to wit, on the 8th day of June, 1812, came Craig and Shocky, and filed the following petition and order for supercederes, to wit:

Petition of Craig and Shockey.

"To the honorable the judges of the circuit court of the United States, for the 7th circuit, for the district of Kentucky, respectfully sheweth your petioners, Lewis Craig and Abraham Shockey, that at the June term, 1800, a judgment in ejectment was entered against them in the court of the United States, for the Kentucky district, in an action of ejectment brought by the lessee of Ambrose Walden, for 4 dwelling-houses, &c. &c.; on which since the last term of the court, an habere facias possessionem has been issued against them. Your petitioners are advised that the issuing of the said habere facias, is both irregular and illegal, and they are furnished by their counsel with the following assignment of errors:

1st. The judgment in ejectment was entered at the June term, 1800, and there is no record of any execution having issued until September, 1811. No execution ought to have issued after a lapse of a year, after the entry of judgment without a scire facias. Runn on ejectment 142.

2ndly. The term had expired before the entry of judgment; of course the judgment itself is impeachable, but is sufficient for the petitioners that no habere facias can legally issue where the term has expired. Runn 146–7, 283, 122.

Your petitioners therefore pray that a supercedeas may issue, &c.

J. HUGHES, *For*
CRAIG & SHOCKEY.

Order for Supercedeas.

UNITED STATES OF AMERICA—*Kentucky District, Sct:*

Issue a supercedeas agreeably to the foregoing petition, taking bond and security according to law. Witness my hand as judge of the said district, this 6th day of June, 1812.

HARRY INNIS.

To JOHN H. HANNA,
Clerk U. S. C. C., &c. &c.

Injunction Bond.

Know all men by these presents, that we, Lewis Craig, Abraham Shockey and Thomas Bodley, all of the State of Kentucky, are held

and firmly bound unto Ambrose Walden, of the State of Virginia, in the sum of one thousand dollars, to which payment, of well and truly made, to the said Walden, his heirs, executors, administrators or assigns, we bind ourselves, our heirs, executors, and admrs., jointly and severally, firmly by these presents; sealed with our seals, and dated this 8th day of June, A. D. 1812.

The condition of the above obligation is such, that whereas the above bound Craig and Shockey, have this obtained a writ of supercedeas to stall all further proceedings upon a writ of habere facias, which issued from the office of the district court of the United States, in and for the Kentucky district, on the 2d day of June, 1812; wherein John Denn, ass'ee of the above named Ambrose Walden, is plaintiff, and the above bound Craig and Shockey are defts., for the possession of 4 dwelling-houses, 20 out-houses, 15 acres of meadow, 100 acres of arable, and three hundred acres of woodland, with the appurtenances, on the waters of Johnson's fork, of Licking, in the county of Mason, in the district aforesaid.

Now, if the said Craig and Shockey shall prosecute the said supercedeas with effect, or in case of failure thereof, the said Craig, Shockey, and Bodley, shall well and truly pay, or cause to be paid, all such damages and costs, as may be awarded against the said Craig and Shockey in case the proceedings afs'd shall be affirmed; then the above obligation to be void, or else to remain in full force and virtue.

Witness, [SEAL.]
S. J. M. MAJOR. [SEAL.]
THOS. BADLEY, [SEAL.]
By J. HUGHES,
his attorney in fact.

Supercedeas.

[SEAL.] The United States of America, to the Marshal of the Kentucky district, greeting:

You are hereby commanded that from all further proceedings, on a habere facias, issued from the clerk's office of the district court of the United States, in and for the Kentucky district, on a judgment in that court, wherein the said John Denn, lessee of Ambrose is plaintiff, and Lewis Craig and Abraham Shockey are defts., which habere facias is the sued 2d day of June, A. D. 1812, against the said Craig and Shockey, for the possession of four dwelling-houses, 20 out-houses, 15 acres of meadow, 100 acres of arable, and 300 acres of woodland, with the appurtenances, on the waters of Johnson's fork, of Licking, in the county of Mason and district aforesaid, you altogether supercede, which habere facias before the judges of our seventh circuit court of the United States, in and for the Kentucky district, is brought to be corrected, on the petition of the said Lewis Craig and Abraham Shockey, who have given bond and security to prosecute with effect;

and if the proceedings aforesaid should be affirmed to satisfy and pay all such damages and costs, as shall be awarded against them. We command you to give notice to the said Ambrose Walden, that he be before the judges of our said seventh circuit court, at the capitol, in the town of Frankfort, on the first Monday in November next, to shew cause why the said habere facias should not be quashed, and have then there this writ.

In testimony whereof, John Marshall, Esq., Chief Justice of the said United States, hath caused the seal of our said court to be hereunto affixed, this 8th day of June, A. D. 1812, and in the 36th year of our Independence.

Attest: JNO. H. HANNA, *C. C. C. K. D.*

Marshal's Return.

Marshal's return—"Executed 17th June, 1812; 62 miles travelling.

JOHN A. MITCHELL, *D. For*
ROBERT CROCKETT,

Order Quashing Executions.

And afterwards, to wit, at the July term of the court aforesaid, and year 1813, the following order was made, to wit:

"The court being now sufficiently advised of, and concerning the premises, do order that the executions issued herein be quashed; they having been issued after the expiration of the demise in the declaration, and that the said plffs. recover against the lessor of the defendant their costs, in this behalf expended.

And afterwards, to wit, at the May term, of the court aforesaid, in the year 1824, (until which time the motion to extend the demise in the declaration was continued,) the following order was made, viz:

Order Extending the demise.

JOHN DEN, on dem. AMBROSE WALDEN, plffs.
against
LEWIS CRAIG & ABRAHAM SHOCKEY, defts. } In Ejectment.

On motion of the plaintiff, by his attorney, leave is given to amend the declaration, by extending the demise to fifty years, which is done accordingly, but execution not to go out before the first day of March next.

Petition of Blair.

And afterwards, to wit, on the 8th day of May, 1835, came Thomas Blair, into the court aforesaid, and filed the following petition, to wit:

"To the hon'ble the judges of the United States circuit, for the seventh circuit and Kentucky district: Your petitioner, Thomas Blair, humbly represents, that in the year 1797, a certain Ambrose Walden, on the demise of John Den, instituted an action of ejectment in the district court, of this district, against Richard Fen, as casual ejector, and during the following year, Lewis Craig and Abraham Shockey were admitted to defend said suit, and at the June term, 1800, a judgment was rendered in favor of said Walden, for the land then in possession of Shockey, the tena't in possession; but no writ of possession has ever been executed to this day; that the demise in said declaration was laid at ten days from the 15th day of August, 1789, and of course expired on the 15th day of August, 1799, and remained dead and inoperative for upwards of twenty-four and nearly 25 years; by which lapse of time, as your petitioner is advised, the possession ripened into a complete legal estate; but at the May term, 1824, of your honorable court, on the motion of said Walden, the demise afs'd was amended by inserting a new one of fifty years, instead of ten, which has been inserted in the original declaration, without the knowledge of, or notice to, either Craig or Shockey, as your petitioner is informed and believes, or any other person interested in said land, and said exparte order was not discovered until after the term at which it was made was over. Your petitioner is advised that said order was surreptitiously obtained and improvidently made, for errors in fact, even waiving the impropriety of bringing into life a judgment in ejectment, perfectly dead for upwards of twenty years, and that for the following facts and reasons, viz:

1st. After the expiration of the demise in said Walden's declaration, and before the renewal thereof, your petitioner is advised that said Shockey sold the land in contest to Rob't Pogue, who claimed it previously under the patent in the name of Tibbs & Co., for 10,000 acres of land, posterior in date to that of said Walden and adverse thereto, and said Pogue who purchased in order to unite the conflicting claims in himself, then took possession of said land in contest and continued the possession in himself until about the year 1814, when he sold the same to Tilton and Huston, who held the possession for two or three years, and then sold to Gilson Hambrick, who continued in the possession until the demise was extended, and until he sold and delivered possession to your petitioner, which was in the year 1831 or 1832; at the date of the extension of the demise aforesaid, viz: the 8th of May, 1824, the said Hambrick claimed and owned the land in contest, and was in fact the tiere tenant, and the said Hambrick had no notice or knowledge whatever of said extension, but the whole proceeding as to him was exparte, nor did your petitioner have any knowledge whatever, that said demise had been extended at or before the date of his purchase afs'd, the said Lewis Craig was not a tiere tenant, but entered a defendant with Shockey on account of having sold to him the land in contest. Your petitioner is advised that, under this state of facts his redress is by mo-

tion to reverse and annul said order renewing the demise, and he accordingly prays for such relief, as well as for such other redress as his case requires, and as in duty bound, &c.

THOMAS BLAIR.

The said Blair assigns the following errors which he saith hath intervened in the record and proceedidgs to his prejudice in this, viz:

1st. The land in question had been possessed adversely for upwards of 20 years after the first demise had expired, and previous to the order enlarging it, and no extension or renewal of the same ought to have taken place.

2d. No renewal of the demise ought to have taken place without notice to Lewis Craig and Abraham Shockey; the one the landlord, and the other the tiere tenant when the suit was commenced.

3d. It was irregular to renew the demise, after it had expired, without notice to Hambrick, the tiere tenant, at the date of the extension of the demise.

4th. The whole proceeding was irregular, collusive and void, and ought not to have been granted.

MOREHEAD & BROWN.

Mo. for rule on Def't to shew Cause, &c.

And afterwards, to wit, at the May term of the court aforesaid, in the year 1835:

Came the plaintiff and filed his petition, and moved the court for a rule on the defendant, to shew cause why the orders extending the demise in the declaration described, and set forth in his petition, should not be set aside.

Whereupon the defendant, by attorney, entered his appearance to said rules, and the arguments of counsel being heard in part only, the same is laid over.

And afterwards, to wit, on a following day of the term, and year last aforesaid, the following order was made herein, viz:

Rule granted.

The court being now sufficiently advised of, and concerning the plaintiff's motion, do consider that the defendant shew cause, on or before the sixth day of the next term, why the order made at the May term of this court, in the year 1824, extending the demise in the declarations of John Den, on demise of Ambrose Walden, against Jonathan Rose and Lewis Craig; and John Den, on dem., said Walden against Lewis Craig and Abraham Shockey, should not be set aside and annulled.

And afterwards, to wit, at the May term of the court aforesaid, in the year 1836: (until which time this cause was continued,) the following order was made herein, viz:

Judgment.

The evidence having been heard, and this motion having been argued on a former day of the court, and the court being now sufficiently advised of, and concerning the premises, and the judges being divided in opinion, it is considered by the court that said motion be overruled, and that the defendant recover of the plaintiff his costs, expended in this motion.

UNITED STATES OF AMERICA,
8th Circuit, Kentucky District—Sct.

I, John H. Hanna, clerk of the eighth circuit court of the United States of America, in and for the Kentucky district, do certify that the foregoing twenty-seven pages, (including this,) contain a full, true, and complete transcript of the scire facias and proceedings had thereon.

In testimony whereof, I have hereunto subscribed my name, and affixed the seal of said court, this 13th day of January, A. D. 1838, and in the 62nd year of our Independence.

[L. S.]

JNO. H. HANNA.

UNITED STATES OF AMERICA, *Sct.*

The President of the United States, to the Judges of the Eighth Circuit Court of the United States of America, in and for the Kentucky District, greeting:

Allowed by Thos. B. Monroe, J. U. S. Dist. Ky.

That because in the record and proceedings, and also in rendering a judgment in a suit before them, between John Den, on the demise of Ambrose Walden, plaintiff, and John Bing, and Catharine Bing, his wife, John Craig, William Craig, Francis Barker, Thomas Tureman and Sarah Tureman, his wife, David Childs, John Chiles, Ann Sword, Maria Sword, Elizabeth Sword, Lewis Craig, Elizabeth Kempt, Oliver Craig, Francis Craig, McCoy Craig, Jane Craig, Melvina Craig, John H. Craig, Polly Craig, Francis Thomas, and Elizabeth Thomas, heirs of Lewis Craig, dec'd., Abraham Shockey and Thomas Blair, defendants, manifest error hath intervened to the great damage of the said John Den, on the demise of Ambrose Walden, as in his complaint hath been stated, and as it is just and proper, that the error, if any there be, should be corrected in due manner, and that full and speedy justice should be done to the parties aforesaid, in this behalf.

You are hereby commanded, that if a judgment thereof be given, then under your seal, you distinctly and openly send the record and

proceedings in the suit aforesaid, with all things concerning them, and this writ, so that you have the same before the Chief Justice and Associate Justices of the Supreme Court of the United States, at the city of Washington, on the second Monday in January, 1838, the present seat of the National Government, that the record and proceedings aforesaid, being inspected, they may cause to be done, thereupon, what of right ought to be done.

Witness, Roger B. Taney, Esq. Chief Justice of the Supreme Court of the United States, at Washington aforesaid, this 4th day of January, 1838, and in the 62d year of our Independence.

Att: JNO. H. HANNA,
C. C. C. K. D.

To John Bing, and Catharine Bing, his wife, John Craig, William Craig, Francis Barker, Thomas Tureman, and Sarah Tureman, his wife, David Childs, John Chiles, Ann Sword, Maria Sword, Elizabeth Sword, Lewis Craig, Elizabeth Kempt, Oliver Craig, Francis Craig, McCoy Craig, Jane Craig, Melvina Craig, John H. Craig, Polly Craig, Francis Thomas, and Elizabeth Thomas, heirs of Lewis Craig, dec'd., Abraham Shockey and Thomas Blair, greeting:

Whereas, as writ of error hath been issued by the clerk of the eighth circuit court of the United States of America, in and for the Kentucky district, and allowed by Judge Monroe, on behalf of John Den, on demise of Ambrose Walden; returnable to the Supreme Court of the United States, at the city of Washington, on the second Monday in January, 1838, to reverse a judgment entered up by the said circuit court, in a certain suit wherein said John Den, on demise of Ambrose Walden, was plaintiff, and said Craig's, heirs were defendants.

These, therefore, are again to cite and command you, that you be and appear in the said Supreme Court, at the city of Washington, on the second Monday in January, 1839, then and there to hear the errors assigned for the reversal of the said judgment, and to be heard, if any thing you have to say, upon the said writ of error.

Witness my hand, as one of the judges of said circuit court, this 8th day of March, 1838, and in the 62d year of our Independence.

THOS. B. MONROE,
J. U. S. Dist. Ky.

Executed May 2, 1838, on Maria Soward, alias Sword.

JNO. M. McCALLA,
M. K. D.

Executed on 23d May, on Anna Soward; on 29 May, on Elizabeth Soward; on 30 May, on Elizabeth Kempt, Lewis Craig, Oliver Craig, Jane Craig, and Malvina Craig; on 31st May, on William and John

H. Craig; June 4, on Polly Craig; June 6, on Catharine King, alias Bing, and John Chiles, on Frances Barker, and Frances McCoy, alias Craig; June 8, on Thomas Blair; on David Childs on 16 June; John King, and John Craig, are dead. Thomas and Sarah Tureman, Francis and E. Thomas, and A. Shockey, not found; not inhabitants of this district. Mccoy Craig not found; no such person.

ANDREW J. McCALLA,
D. M. K. D.

Service on 17 defts. - - - -		$34 00
Travel 261 miles, - - - -		13 05
		$47 05